

# GIBBS GIDEN ATTORNEYS AT LAW

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May 4, 2015

### VIA FACSIMILE, E-MAIL, AND U.S. MAIL

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Re: **Contract No. 01-493704**  
*Bid Protest of McCullough Construction, Inc.*

Dear Mr. McMillan:

Our office represents McCullough Construction, Inc. ("McCullough"), the apparent second-low bidder on California Department of Transportation ("Caltrans") Contract No. 01-493704 ("Contract"). In follow up to the brief protest letter submitted by McCullough on April 23, 2015, regarding the bid of Mercer-Fraser Company ("Mercer-Fraser"), we submit this letter to expand upon the points raised in that initial protest letter regarding deficiencies in Mercer-Fraser's bid that render it non-responsive. As such, Mercer-Fraser's bid must be rejected and the Contract should be awarded to McCullough, the lowest responsible and responsive bidder.

To be "responsive," a bid must be in strict and full accordance with the material terms of the bidding instructions. *Taylor Bus Serv., Inc. v. San Diego Board of Educ.* (1987) 195 Cal.App.3d 1331; *MCM Constr., Inc. v. City & County of San Francisco* (1998) 66 Cal.App.4th 359. Usually, whether a bid is responsive can be determined from the face of the bid without outside investigation or information. *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432. A bid that varies materially from the specifications must be rejected. *Stinson*

▲ A PROFESSIONAL CORPORATION  
\* ADMITTED IN CALIFORNIA & NEVADA  
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*v. Hanley* (1907) 151 Cal. 379; *Ghilotti Constr. Co. v. City of Richmond* (1996) 45 Cal.App.4th 897.

Any “material” variance in a bid may not be waived by the awarding authority, and bids containing “material” variances must be rejected. *Stimson v. Hanley* (1907) 151 Cal. 379. This principle insures that all bidders will be treated alike and guards against the possibility for fraud, corruption or favoritism in the bidding selection process. More fundamentally, it ensures that the public agency will be comparing “apples to apples” when reviewing the competing bid proposals. The “material” terms of a bid are (1) those terms which could affect price, quantity, quality or delivery; and (2) those terms which are clearly identified by the bid documents as mandatory. The determination of whether a bid proposal fails to comply with material terms the bid documents is by necessity a factual determination based upon whether the variation gives the bidder an unfair advantage relative to other bidders or could have withdrawn its bid without forfeiting its bid security. *Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175.

Section 2-1.12B(2) of the Special Provisions requires that DBE information be submitted by the bidder in accordance with Section 2-1.33, which requires the DBE Commitment form (DES-OE-0101.10D) to be submitted for this Contract no later than 4 p.m. on the 4<sup>th</sup> business day after bid opening. The DBE Commitment form is therefore a mandatory part of the bid, and deficiencies on that form may not be waived; Mercer-Fraser’s DBE Commitment form contains numerous deficiencies.

First, the Bid Amount listed on the second line of Mercer-Fraser’s DBE Commitment form is wrong. (See, **Exhibit A** attached hereto (Mercer-Fraser’s DBE Commitment form), item #1.) It states that Mercer-Fraser’s Bid Amount is \$325,125.00, although Mercer-Fraser’s Total Bid price on its Bid Item List is \$1,892,180.20. That is a significant discrepancy and it creates an ambiguity as to what Mercer-Fraser’s bid price is supposed to be. Mercer-Fraser could have raised this as a bid mistake pursuant to *Public Contract Code* section 5103 and withdrawn its bid without forfeiting its bid security. Section 5103 allows a bidder to be relieved of its bid when a mistake makes the bid materially different than intended, if that mistake was made in filling out the bid and not due to an error in judgment or to carelessness in inspecting the site of the work or reading the plans and specifications. Therefore, this irregularity, which was clearly caused by a mistake in filling out the bid forms, cannot be waived and the bid is non-responsive. See, *Menefee, supra*, 163 Cal.App.3d at 1180-1181; see also, *Williams v. Bergin* (1900) 129 Cal. 461.

Second and third, the Total Number of All Subcontracts (DBE & Non-DBE) and the Total Value of all Subcontracts (DBE and Non-DBE) are blank. (See, **Exhibit A** attached hereto, items #2 and #3.) This information is required and cannot be determined from looking elsewhere in Mercer-Fraser’s bid, because these Totals includes *all* subcontracts, not just those of listed subcontractors. *Public Contract Code* section 4104 requires that bidders list only those subcontractors who will perform work in an amount in excess of one-half of one percent of the prime contractor’s total bid, or, for street and highway construction, \$10,000, whichever is greater. Therefore, any subcontractor that Mercer-Fraser intends to use with a subcontract

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amount under the threshold established by section 4104 does not need to be listed and it is impossible to tell from any document in Mercer-Fraser's bid what the total number of subcontracts and the total value of the subcontracts are. Therefore, Mercer-Fraser has quite simply failed to provide two pieces of mandatory information. This gives Mercer-Fraser an unfair advantage because the submission of these figure locks the bidders into the number and the value of subcontracts it will have for the project, but Mercer-Fraser's omission of these figures allows Mercer-Fraser to change the number and the value of subcontracts it is committed to after the bid deadline. This deviation is therefore material and cannot be waived, making the bid non-responsive.

The court in *Ghilotti Constr. Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 900, court explained that "[t]o be considered inconsequential, a deviation must neither give the bidder an unfair competitive advantage nor otherwise defeat the goals of insuring economy and preventing corruption in the public contracting process." Explained another way, an "immaterial variation" is the failure of a bidder to meet a bid requirement that does not affect the bidder's commitment if it is awarded the contract, either because (1) the requirement is merely procedural and, in the particular case, the meaning of the bid is clear; (2) the requirement is substantive but it is satisfactorily met, although not in the precise manner contemplated by the bidding documents; or (3) the requirement not met is one calling for information that relates not to the performance of the obligation but to independently verifiable facts regarding the bidder's status. In short, an "immaterial variation" will not change the bidder's performance obligations as described in the bid documents and does not provide the bidder an unfair advantage over other bidders. See, *Konica Bus. Machs. U.S.A., Inc., v. Regents of Univ. of Cal.*, (1988) 206 Cal.App.3d 449.

Here, however, these blanks on the DBE Commitment form are material because they each change Mercer-Fraser's performance obligations with respect to subcontracting and give Mercer-Fraser an unfair advantage (actually, two unfair advantages) over the other bidders that properly completed the form and stated how many subcontracts they have, and their value, for the project.

Fourth, the dollar figure listed for S.T. Rhodes Construction, Inc. ("S.T. Rhodes") on the DBE Commitment form is \$272,999.00, but the total from the Bid Item List of the Bid Item Nos. identified for S.T. Rhodes on the DBE Commitment form is only \$246,455.00, a difference of \$26,544.00. (See, **Exhibit A** attached hereto, item #4, and items marked on **Exhibit B** (Mercer-Fraser's Bid Item List) attached hereto.) The S.T. Rhodes dollar amount creates another ambiguity with respect to whether the error is on the DBE Commitment form or on Mercer-Fraser's Bid Item List. Also significant is the fact that S.T. Rhodes' bid amount is \$264,499 for the Bid Items Mercer-Fraser indicated S.T. Rhodes will perform. (See, **Exhibit C** attached hereto.) Yet the actual dollar total of Mercer-Fraser's bid for those items is \$246,455, which is \$19,044 less than S.T. Rhodes' bid—this means there is an inconsistency regarding the dollar amount claimed by Mercer-Fraser for DBE credit, which is improper. Mercer-Fraser could have raised these issues as a bid mistake(s) pursuant to *Public Contract Code* section 5103 and

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withdrawn its bid without forfeiting its bid security. Therefore, this irregularity, which was clearly caused by a mistake in filling out the bid forms, cannot be waived and the bid is non-responsive. See, *Menefee, supra*, 163 Cal.App.3d at 1180-1181; see also, *Williams v. Bergin* (1900) 129 Cal. 461.

Fifth, Mercer-Fraser's dollar figure error generates an additional mistake regarding the Total Claimed Participation. The dollar amount of the work to be performed by DBEs is mandatory and important to the bid process. Mercer-Fraser's submission contains incorrect information, which is misleading with respect to the Total Claimed Participation of DBEs. Mercer-Fraser has claimed \$312,522.00 (16.78% participation), but in reality, after adjusting the S.T. Rhodes dollar amount to the proper figure, the Total Claimed Participation is \$274,667.00 (14.52%) (See, **Exhibit A** attached hereto, item #5.) This is yet another error that would allow Mercer-Fraser to be relieved of its bid without consequence under *Public Contract Code* section 5103. Errors such as these cannot be waived as immaterial; as such, Mercer-Fraser's bid is non-responsive.

Sixth, a comparison of Mercer-Fraser's Bid Item List amounts to the DBE Commitment form to S.T. Rhodes bid reveals that two items S.T. Rhodes is to perform, items 37 (Place Hot Mix Asphalt (miscellaneous area)) and 56 (12" Concrete Flared End Section) were bid by Mercer-Fraser to Caltrans at a significantly lower dollar amount than S.T. Rhodes bid to Mercer-Fraser. Specifically, S.T. Rhodes bid item 37 at \$25,200, but Mercer-Fraser's bid for item 37 is a mere \$900. Likewise, S.T. Rhodes bid item 56 at \$5,400, but Mercer-Fraser's bid for item 56 is only \$2,730. (Compare, **Exhibits A, B, and C**.) Those vast differences indicate that S.T. Rhodes is performing only a fraction of those bid items, but Mercer-Fraser did not describe the exact portion of the item to be performed, as required by the DBE Commitment form when the DBE is not performing 100% of an item. (See, footnote 2 on **Exhibit A**.) These are material variances from the requirements of the bidding documents that cannot be waived by Caltrans, which makes Mercer-Fraser's bid non-responsive. See, *Valley Crest Landscape, Inc., supra*, Cal.App.4th at 1438.

Seventh, the Bid Item Numbers listed on Mercer-Fraser's DBE Commitment form for M&S Environmental Landscapes, Inc. ("M&S") do not match the Bid Item Numbers that M&S bid on and that Mercer-Fraser listed M&S for in its bid. Specifically, Mercer-Fraser indicated on its DBE Commitment form that M&S will perform Bid Item Nos. 10, 30 and 31. (See, **Exhibit A** attached hereto, item #6.) However, in its bid, Mercer-Fraser indicated that M&S will perform Bid Item Nos. 10, 31, and 32. (See, **Exhibit D** attached hereto.) Likewise, M&S's bids to Mercer-Fraser are for Bid Item Nos. 10, 31, and 32. (See, **Exhibit E** attached hereto.) Mercer-Fraser has therefore created an ambiguity regarding what Bid Items M&S will be performing by claiming Bid Item No. 30 and not claiming Bid Item No. 32 on the DBE Commitment form. Caltrans reviews quotes from DBEs that are submitted with the DBE Commitment form to verify if the DBEs are committed to perform the work indicated on the form. (See, e.g., Fact Sheet on Evaluating DBE Participation, attached hereto as **Exhibit F**.) Here, Caltrans cannot so confirm because Mercer-Fraser has claimed performance of a Bid Item that M&S did not bid on. The



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DBE Commitment form and necessary back-up documentation therefore does not conform to the requirements of the bidding documents. *See, Valley Crest Landscape, Inc., supra*, Cal.App.4th at 1438. These are material irregularities that cannot be waived by Caltrans, rendering Mercer-Fraser's bid non-responsive.

Eighth, Mercer-Fraser failed to list the Work Category Codes for each DBE subcontractor on the DBE Commitment form. That information is not available elsewhere in Mercer-Fraser's bid. Caltrans only counts DBE participation when it can be demonstrated that a certified DBE possessing the correct work codes will be actively performing work. (*See, e.g.,* Fact Sheet on Evaluating DBE Participation, attached hereto as **Exhibit F**.) The Special Notices page of the Special Provisions for this Contract refers bidders to sections 2, 3, and 5 of the Revised Standard Specifications ("RSS") for revised DBE requirements. Section 2-1.12B(1) of the RSS provides that the bidder is "responsible to verify at bid opening the DBE firm is certified as a DBE by the California Unified Certification Program and possess the work codes applicable to the type of work the firm will perform on the Contract." (*See, Exhibit G* attached hereto.) (Emphasis added.) Therefore, Mercer-Fraser's failure to provide the work codes for its DBE subcontractors makes the bid non-responsive because it does not comply with the requirements of the bid documents. *See, Valley Crest Landscape, Inc., supra*, Cal.App.4th at 1438.

Lastly, as part of its Good Faith Effort documentation, Mercer-Fraser indicated that McCullough only bids as a prime contractor. There is no indication that Mercer-Fraser actually contacted McCullough and was told this, it is simply presented as fact. In truth, however, McCullough has a long history of bidding as a subcontractor to prime bidders on many state and federal projects. Since Mercer-Fraser's Good Faith Effort documentation is public record and easily accessible on Caltrans' website, the inclusion of this false information could be damaging to McCullough.

In conclusion, Mercer-Fraser's bid contains numerous material irregularities that render the bid non-responsive such that Caltrans must reject the bid. Even if Caltrans deems one or more of Mercer-Fraser's bid failings to be waivable deviations, Caltrans is not required to waive any of them. An agency is not required to waive insubstantial deviations from bid requirements because the power to waive immaterial bid variations is discretionary, not mandatory. *MCM Constr., Inc. v. City & County of San Francisco* (1998) 66 Cal.App.4th 359. Here, the sheer number of problems related to Mercer-Fraser's DBE Commitment calls for Caltrans to reject the bid as non-responsive, even if some or all of the deviations are ultimately determined to be immaterial. As set forth above, however, the irregularities are material and waiving them would give Mercer-Fraser an unfair competitive advantage. Moreover, this is not the first time that Mercer-Fraser has made errors such as these, expecting its repeated bid deficiencies to be waived by Caltrans. (*See, e.g.,* bid documents and protest correspondence regarding Contract No. 02-3E7714.)

**GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP**

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McCullough is ready, willing, and able to perform the Contract. We therefore respectfully request that Caltrans reject Mercer-Fraser's bid as non-responsive and award the Contract to McCullough, the lowest responsive and responsible bidder.

Very truly yours,



Sara H. Kornblatt  
for GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

SHK:sk

Enclosures

cc: Dena McCullough, McCullough Construction, Inc. (via email only)  
Mohsen Sultan, Chief, Office of Contracting Systems (via email to  
mohsen.sultan@dot.ca.gov)  
Mulissa Smith (via email to mulissa.smith@dot.ca.gov)

## EXHIBIT A

# Low Bidder

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
DBE - COMMITMENT  
DES-0E-0102 10D (REV 12/2014)

CONTRACT NO. 01-493704

BID AMOUNT  
\$ 325,125.00

BIDDING DATE 4/7/2015

BIDDER'S NAME Mercer-Fraser Company

DBE GOAL FROM CONTRACT 12%

DBE PRIME CONTRACTOR CERTIFICATION<sup>1</sup>

TOTAL NUMBER OF ALL SUBCONTRACTS (DBE & NON-DBE) TOTAL VALUE OF ALL SUBCONTRACTS (DBE & NON-DBE)

BID ITEM NO	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED <sup>2</sup>	WORK CATEGORY CODES <sup>3</sup>	NAME OF DBE (Must be certified on the date bids are opened. Include Caltrans' certification no., DBE address, and phone number. Show 2nd and lower tier subcontractors.)	AVOID <sup>4</sup> (\$)
#6 19, 20, 21	Hydroseed, Wood Mulch, Temp Hydroseed		MRS Environmental Landscapes Inc 12192 Mac's Rd Redding, CA 96005 530-241-1418 DBE - 050736	\$18,123.00
18, 21, 22, 24, 27, 37, 40, 41, 50-60, 62, 69	Drainage, Concrete		S.T. Rhodes Construction Inc 8585 Commercial Way Redding, CA 96002 530-223-9122 DBE - 37093	\$272,000.00 #4
20, 34, 35	Graveling		Frank Zabel Trucking PO Box 6236 Garza, CA 95502 707-443-4272 DBE - 1823	\$26,499.00

Show all DBE firms being claimed for credit, regardless of tier. Attach written confirmation from each DBE showing stating that it will be participating in the contract to perform the specific work shown for the specific amount agreed to.

The names of the 1st tier DBE subcontractors and items of work must be consistent with the Subcontractor List (Publ Conf Code § 4100 et seq.).

<sup>1</sup>Each DBE prime contractor must enter its certification number and show all work to be performed by DBEs, including work performed by its own forces.

<sup>2</sup>If 100% of an item is not to be performed or furnished by the DBE, describe the exact portion of the item to be performed or furnished.

<sup>3</sup>Use Work Category Codes from the California Unified Certification Program database.

Total Claimed  
Participation

\$ 317,523.00

10.78%

The bidder acknowledges that it is committed to use the DBEs shown on this form to meet the contract goal (49 CFR 26.53).

Signature of Bidder

4/7/2015

Date

Charlie Anderson

Person to Contact

707-443-6371

Area Code/ Tel. No.

(Please Type or Print)

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Contract No. 01-493704

## EXHIBIT B



STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION  
 Contract No.: 01-493704 Project ID: 0100000478  
 Bidder Name: Mercer-Fraser Company

Bidder ID: VC0000003985

BID ITEM LIST

Item No.	Item Code	Item Description	Estimated Quantity Unit of Measure	Unit Price	Item Total
13	130650	TEMPORARY GRAVEL BAG BERM	300.0 LF	5.00	1,500.00
14	130730	STREET SWEEPING	LUMP SUM LS	LUMP SUM	5,000.00
15	130900	TEMPORARY CONCRETE WASHOUT	LUMP SUM LS	LUMP SUM	1,500.00
16	141000	TEMPORARY FENCE (TYPE ESA)	100.0 LF	5.00	500.00
17	141120	TREATED WOOD WASTE	8,200.0 LB	0.10	820.00
18	150204	ABANDON CULVERT (LF)	390.0 LF	33.00	12,870.00
19	150661	REMOVE GUARDRAIL	220.0 LF	11.00	2,420.00
20	150742	REMOVE ROADSIDE SIGN	31.0 EA	152.00	4,712.00
21	150820	REMOVE INLET	5.0 EA	1,600.00	8,000.00
22	150821	REMOVE HEADWALL	6.0 EA	1,100.00	6,600.00
23	151573	RECONSTRUCT GUARDRAIL	340.0 LF	36.00	12,240.00
24	152430	ADJUST INLET	3.0 EA	1,550.00	4,650.00

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION  
 Contract No.: 01-493704 Project ID: 0100000478  
 Bidder Name: Mercer-Fraser Company

Bidder ID: VC0000003985

BID ITEM LIST

Item No.	Item Code	Item Description	Estimated Quantity Unit of Measure	Unit Price	Item Total
25	153103	COLD PLANE ASPHALT CONCRETE PAVEMENT	31,000.0 SQYD	1.75	54,250.00
26	028662	CLEAN CULVERT	1,130.0 LF	16.00	18,080.00
27	155232	SAND BACKFILL	13.0 CY	205.00	2,665.00
28	160102	CLEARING AND GRUBBING (LS)	LUMP SUM LS	LUMP SUM	10,200.00
29	190101	ROADWAY EXCAVATION	2,270.0 CY	28.00	63,560.00
30	190185	SHOULDER BACKING	940.0 TON	35.00	32,900.00
31	205035	WOOD MULCH	110.0 CY	85.00	9,350.00
32	210430	HYDROSEED	43,000.0 SQFT	0.13	5,590.00
33	260203	CLASS 2 AGGREGATE BASE (CY)	1,200.0 CY	50.00	60,000.00
34	390095	REPLACE ASPHALT CONCRETE SURFACING	160.0 CY	235.00	37,600.00
35	390132	HOT MIX ASPHALT (TYPE A)	8,490.0 TON	98.00	832,020.00
36	393004	GEOSYNTHETIC PAVEMENT INTERLAYER (PAVING FABRIC)	6,450.0 SQYD	2.00	12,900.00

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION  
 Contract No.: 01-493704 Project ID: 0100000478  
 Bidder Name: Mercer-Fraser Company

Bidder ID: VC0000003985

BID ITEM LIST

Item No.	Item Code	Item Description	Estimated Quantity Unit of Measure	Unit Price	Item Total
37	394090	PLACE HOT MIX ASPHALT (MISCELLANEOUS AREA)	180.0 SQYD	5.00	900.00
38	397005	TACK COAT	31.0 TON	700.00	21,700.00
39	028663	RAIL ELEMENT WALL	330.0 SQFT	65.00	21,450.00
40 (F)	510502	MINOR CONCRETE (MINOR STRUCTURE)	7.0 CY	2,400.00	16,800.00
41	510526	MINOR CONCRETE (BACKFILL)	6.0 CY	300.00	1,800.00
42	560248	FURNISH SINGLE SHEET ALUMINUM SIGN (0.063"-UNFRAMED)	170.0 SQFT	10.00	1,700.00
43	566011	ROADSIDE SIGN - ONE POST	23.0 EA	235.00	5,405.00
44	566012	ROADSIDE SIGN - TWO POST	3.0 EA	335.00	1,005.00
45	028664	FURNISH SINGLE SHEET ALUMINUM SIGN (0.063"-UNFRAMED) FOR RETROREFLECTIVE SHEETING (TYPE XI)	100.0 SQFT	7.00	700.00
46	028665	FURNISH SINGLE SHEET ALUMINUM SIGN (0.080"-UNFRAMED) FOR RETROREFLECTIVE SHEETING (TYPE XI)	8.0 SQFT	8.00	64.00

## STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Contract No.: 01-493704

Project ID: 0100000478

Bidder Name: Mercer-Fraser Company

Bidder ID: VC0000003985

## BID ITEM LIST

Item No.	Item Code	Item Description	Estimated Quantity Unit of Measure	Unit Price	Item Total
47	028666	FURNISH SINGLE SHEET ALUMINUM SIGN (0.063"-FRAMED) FOR RETROREFLECTIVE SHEETING (TYPE XI)	23.0 SQFT	13.00	299.00
48	028667	FURNISH SINGLE SHEET ALUMINUM SIGN (0.080"-FRAMED) FOR RETROREFLECTIVE SHEETING (TYPE XI)	53.0 SQFT	14.00	742.00
49	028668	RETROREFLECTIVE SHEETING (TYPE XI)	190.0 SQFT	6.00	1,140.00
50	641107	18" PLASTIC PIPE	6.0 LF	335.00	2,010.00
51	650010	12" REINFORCED CONCRETE PIPE	140.0 LF	210.00	29,400.00
52	650012	15" REINFORCED CONCRETE PIPE	13.0 LF	220.00	2,860.00
53	665018	18" CORRUGATED STEEL PIPE (.109" THICK)	65.0 LF	320.00	20,800.00
54	667001	17" X 13" CORRUGATED STEEL PIPE ARCH (.079" THICK)	7.0 LF	280.00	1,960.00
55	705011	18" STEEL FLARED END SECTION	6.0 EA	160.00	960.00
56	705201	12" CONCRETE FLARED END SECTION	3.0 EA	910.00	2,730.00
57	705202	15" CONCRETE FLARED END SECTION	1.0 EA	925.00	925.00

## STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

Contract No.: 01-493704

Project ID: 0100000478

Bidder Name: Mercer-Fraser Company

Bidder ID: VC0000003985

## BID ITEM LIST

Item No.	Item Code	Item Description	Estimated Quantity Unit of Measure	Unit Price	Item Total	
58	028669	17" X 13" STEEL FLARED END PIPE ARCH SECTION	1.0 EA	130.00	130.00	★
59	707117	36" PRECAST CONCRETE PIPE INLET	13.0 LF	505.00	6,565.00	★
60	730010	MINOR CONCRETE (CURB) (LF)	1,660.0 LF	45.00	74,700.00	★
61	730070	DETECTABLE WARNING SURFACE	200.0 SQFT	24.00	4,800.00	
62 (F)	750001	MISCELLANEOUS IRON AND STEEL	2,165.0 LB	5.00	10,825.00	★
63	820110	MILEPOST MARKER	3.0 EA	41.00	123.00	
64	820112	MARKER (CULVERT)	30.0 EA	41.00	1,230.00	
65	820134	OBJECT MARKER (TYPE P)	4.0 EA	41.00	164.00	
66	820151	OBJECT MARKER (TYPE L-1)	8.0 EA	41.00	328.00	
67	820152	OBJECT MARKER (TYPE L-2)	10.0 EA	41.00	410.00	
68	832070	VEGETATION CONTROL (MINOR CONCRETE)	330.0 SQYD	50.00	16,500.00	
69	839402	CONCRETE BARRIER (SPECIAL)	47.0 LF	815.00	38,305.00	★



## EXHIBIT C

# S.T. RHOADES CONSTRUCTION INC.

8585 COMMERCIAL WAY, REDDING, CA 96002  
P.O. BOX 494520, REDDING, CA., 96049  
530-223-9322, Fax 530-223-9222, License # 930684  
MBE/SBE- 1247344, U/DBE-37693, UNIONS-OPERATORS, LABORERS  
DIR # 1000008025



## PROPOSAL

To: General Contractors

Attn:

Project: CT 01-493704

Date:

4/7/2015

Bid date:

4/7/2015

Date: 4/7/2018

Item	Description	Quantity	UM	Unit Price	Amount	
18	Abandon Culvert	390	lf	\$ 32.00	\$ 12,480.00	
21	Remove Inlet	5	ea	\$ 1,550.00	\$ 7,750.00	
22	Remove Headwall	6	ea	\$ 1,075.00	\$ 6,450.00	
24	Adjust Inlet	3	ea	\$ 1,500.00	\$ 4,500.00	
27	Sand Backfill	13	cy	\$ 200.00	\$ 2,600.00	
37	Place Hot Mix Asphalt (miscellaneous area)	180	sqyd	\$ 140.00	\$ 25,200.00	
40	Minor Concrete (minor structure)	7	cy	\$ 2,400.00	\$ 16,800.00	
41	Minor Concrete Backfill	6	cy	\$ 300.00	\$ 1,800.00	
50	18" Plastic Pipe	6	lf	\$ 331.00	\$ 1,986.00	
51	12" Reinforced Concrete Pipe	140	lf	\$ 209.00	\$ 29,260.00	
52	15" Reinforced Concrete Pipe	13	lf	\$ 215.00	\$ 2,795.00	
53	18" CSP	65	lf	\$ 315.00	\$ 20,475.00	
54	17" x 13" Corrugated Steel Pipe Arch	7	lf	\$ 279.00	\$ 1,953.00	
55	18" Flared End Section	6	ea	\$ 150.00	\$ 900.00	
56	12" Concrete Flared End Section	6	ea	\$ 900.00	\$ 5,400.00	
57	15' Concrete Flared End Section	1	ea	\$ 920.00	\$ 920.00	
58	17" x 13" Flared End Pipe Arch Section	1	ea	\$ 125.00	\$ 125.00	
59	36" Precast Concrete Pipe Inlet	13	lf	\$ 500.00	\$ 6,500.00	
60	Minor Concrete (Curb) (lf)	1660	lf	\$ 44.00	\$ 73,040.00	
62	Miscellaneous Iron and Steel	2165	lb	\$ 3.00	\$ 6,495.00	
<del>68</del>	<del>Vegetation Control (minor concrete)</del>	<del>336</del>	<del>sqyd</del>	<del>6</del>	<del>58.00</del>	<del>\$ 19,140.00</del>
69	Concrete Barrier (special)	47	lf	\$ 810.00	\$ 38,070.00	
<del>81</del>	<del>Mobilization (partial)</del>	<del>1</del>	<del>ls</del>	<del>7,500.00</del>	<del>7,500.00</del>	
				Total:	\$ 292,139.00	

- Notes
- Proposal valid for 30 days, Allow 10 days for scheduling
  - Payment to be made 15 days after work is completed
  - Price includes furnishing and installation unless otherwise noted.
  - All Work to be available upon mobilization to site and performed consecutively
  - 1 Mobilization included for our work
  - Quote is non seperable.
  - Excludes Traffic Control
  - Item 69 and 81 include for form/pour/strip

- Exc.
- Bonds
  - Permits
  - Raising/Lowering Iron

ST Rhoades Const Inc Fax: 530-223-9222 Apr 7 2015 12:44pm P001/002

## EXHIBIT D

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION  
Contract No.: 01-493704 Project ID: 0100000478  
Bidder Name: Mercer-Fraser Company  
DES-08-0102.2B(REV 5/2014)

Bidder ID: VC0000003985

Bidding Firm: Mercer-Fraser Company

List this sub? Yes

7) Business Name CENTRAL STRIPING SERVICE

Location City RANCHO CORDOVA State CA

California Contractor License Number 403896

CA Department of Industrial Relations' Registration Number 1000006499

Portion of Work Subcontracted:

Item #	Description
77 100	THERMO PAVEMENT MARKING
78 100	PAVEMENT MARKER

List this sub? Yes

8) Business Name M & S ENVIORNMENTAL

Location City REDDING State CA

California Contractor License Number 751931

CA Department of Industrial Relations' Registration Number 1000010084

Portion of Work Subcontracted:

Item #	Description
10 100	TEMP HYDROSEED
32 100	HYDROSEED
31 100	WOOD MULCH

List this sub? Yes

9) Business Name ROBERT COLBURN ELECTRIC

Location City EUREKA State CA

California Contractor License Number 750471

CA Department of Industrial Relations' Registration Number 1000000666

Portion of Work Subcontracted:

Item #	Description
79 100	LED CROSSWALK SYSTEM
80 100	RADAR FEEDBACK SIGNS

## EXHIBIT E



**M&S Environmental Landscapes, Inc.**

12192 Mac's Road

Redding, CA 96003

530-241-1418 FAX 530-241-9647

DIR Registration No. 1000010084

CA Lic. 751931 DBE,SMBE, and MBE Certified CT No. 030736

Bids 4/7/15

Bid For - Humboldt County In Hoopa Route 98

cal-trans # 01-493704

M&amp;S Environmental Landscapes, Inc. would like to propose a bid for the following items:

Item No.	Description	Units	Quantity	Cost per Unit	Est. Cost
32	Hydroseed	SQFT	43000	0.125 \$	5,375.00

**TOTAL****\$ 5,375.00****ADDITIONAL BID NOTES**

- \* Prime Contractor to provide and pay for water source on site (i.e. fire hydrant, water truck, or other approved source) at a minimum rate of 200 g.p.m.
- \* All traffic control to be provided by Prime contractor. Bid valid for 60 days.
- \* One move-in is included in total bid, unless otherwise stated. Additional move-in (if necessary) at the rate of \$600.00 each
- \* An estimated 3 acres of Hydroseeding can be done in one working day. Stand-by time will be billed at \$600.00 per hour.
- \* Performance and Payment bonds are not included. Insurance beyond a \$5 mil umbrella will result in additional charge.
- \* Additional insurance requirements including "Waiver of Subrogation" will be charged to Prime Contractor
- \* Signatory to Local 185 Laborers Union.
- \* If you have any questions please call our office.

Michael Smith

**M&S Environmental Landscapes, Inc.**

12192 Mac's Road

Redding, CA 96003

530-241-1418 FAX 530-241-9647

DIR Registration No. 1000010084

CA Lic. 751931 DBE, SDBE, and MBE Certified CT No. 030738

Bids 4/7/15

Bid For - Humboldt County In Hoopa Route 96

Cal-trans # 01-493704

M&amp;S Environmental Landscapes, Inc. would like to propose a bid for the following items:

Item No.	Description	Units	Quantity	Cost per Unit	Est. Cost
10	Temporary Hydroseed	SQYD	500	3.40 \$	1,700.00
10a	Temporary Move-in/Move-out	EA	1	600.00 \$	600.00

**TOTAL****\$ 2,300.00****ADDITIONAL BID NOTES**

- \* Prime Contractor to provide and pay for water source on site (i.e. fire hydrant, water truck, or other approved source) at a minimum rate of 200 g.p.m.
- \* All traffic control to be provided by Prime contractor. Bid valid for 60 days.
- \* An estimated 3 acres of Hydroseeding can be done in one working day. Stand-by time will be billed at \$600.00 per hour.
- \* Performance and Payment bonds are not included. Insurance beyond a \$5 mil umbrella will result in additional charge.
- \* Additional insurance requirements including "Waiver of Subrogation" will be charged to Prime Contractor.
- \* Signatory to Local 185 Laborers Union.
- \* If you have any questions please call our office.

Michael Smith

**M&S Environmental Landscapes, Inc.**

12192 Mac's Road

Redding, CA 96003

530-241-1418 FAX 530-241-9647

DIR Registration No. 1000010084

CA Lic. 751931 DBE, SDBE, and MBE Certified CT No. 030736



Bids 4/7/15

Bid For - Humboldt County In Hoopa Route 96

cal-trans # 01-493704

M&amp;S Environmental Landscapes, Inc. would like to propose a bid for the following items:

Item No.	Description	Units	Quantity	Cost per Unit	Est. Cost
31	Wood Mulch	CY	110	95.00 \$	10,450.00

**TOTAL** \$ 10,450.00

**ADDITIONAL BID NOTES**

- \* Prime Contractor to provide and pay for water source on site (i.e. fire hydrant, water truck, or other approved source) at a minimum rate of 200 g.p.m.
- \* All traffic control to be provided by Prime contractor. Bid valid for 60 days.
- \* One move-in is included in total bid, unless otherwise stated. Additional move-in (if necessary) at the rate of \$800.00 each.
- \* An estimated 3 acres of Hydroseeding can be done in one working day. Stand-by time will be billed at \$800.00 per hour.
- \* Performance and Payment bonds are not included. Insurance beyond a \$5 mil umbrella will result in additional charge.
- \* Additional insurance requirements including "Waiver of Subrogation" will be charged to Prime Contractor.
- \* Signatory to Local 185 Laborers Union.
- \* If you have any questions please call our office.

Michael Smith

## **EXHIBIT F**

## FACT SHEET

### Federally Funded Contracts Evaluating DBE Participation Role of OBEO, Contract Evaluation Unit May 2013

The California Department of Transportation (Caltrans), Office of Business and Economic Opportunity (OBEO), Contract Evaluation Unit (CEU), is responsible for evaluating all Caltrans federally funded contracts and is responsible for counting Disadvantaged Business Enterprise (DBE) participation towards contract goals according to federal regulation. The CEU determines whether the goal has been met or an adequate good faith effort has been made by the contractor.

<b>Bidder's Responsibility – For Meeting DBE Requirements</b>	
Refer to the Special Provisions of the specific contract you are bidding on for your responsibilities. Contracts are advertised on the Office Engineer's (OE) website at <a href="http://dot.ca.gov/hq/esc/oe/weekly_ads/index.php">http://dot.ca.gov/hq/esc/oe/weekly_ads/index.php</a> and the Division of Procurement and Contracts' (DPAC) website at <a href="http://caltrans-dpac.ca.gov/contract.htm">http://caltrans-dpac.ca.gov/contract.htm</a> .	
<b>Contract Evaluation Unit's Responsibility – Counting DBE Participation</b>	
Step 1	A contract is received from Office Engineer (OE) or Division of Procurement and Contracts (DPAC) and the CALTRANS Bidder-DBE Commitment form from the prime contractor is reviewed to see if the prime contractor met the goal. If not, the good faith effort will be evaluated. See 49 CFR, Part 26, Appendix A, for good faith efforts guidance. This determination is based only on information timely submitted with the bid.
Step 2	<p>Review the CALTRANS Bidder-DBE Commitment form from the prime contractor to:</p> <ul style="list-style-type: none"> <li>ensure that the DBEs are certified by checking the California Unified Certification Program (CUCP) database [cross referencing DBE work category code(s) with contract bid items] <i>(If the DBE is not certified, their participation will not be counted.)</i></li> <li>ensure that the DBEs possess the correct work category code for the type of work they are listed to perform <a href="http://www.dot.ca.gov/hq/bep/find_certified.htm">http://www.dot.ca.gov/hq/bep/find_certified.htm</a> <i>(If the DBE does not possess the correct work category code, their participation will not be counted.)</i></li> <li>verify the dollar amount claimed for credit is accurate <ul style="list-style-type: none"> <li>amount claimed for credit on DBE Commitment form is consistent with written confirmation (quote) from DBE.**</li> <li>amount claimed for credit is consistent with the prime contractor's bid and subcontractor listing</li> </ul> </li> </ul> <p>Written confirmation (quotes) from the DBEs are reviewed to verify if the DBEs are committed to do the work on the Caltrans Bidder DBE Commitment form.**</p> <p><b>**Important Note:</b> Rate sheets that are generic will not be accepted in lieu of written confirmation (quotes). This determination is based only on information timely submitted with the bid.</p>
Step 3	<p>Counting DBE participation: DBE participation is "counted" only where it is demonstrated that a certified DBE possessing the correct work codes will be actively participating on the contract. CEU will count DBE participation as follows:</p> <ul style="list-style-type: none"> <li>The entire amount of that portion of a construction contract that is performed by the DBE's own forces are counted.</li> <li>DBE participation will not be counted if the DBE is not certified at the time of bid or if a certified DBE does not possess the correct work codes.</li> <li>The method for counting trucking towards the DBE goal requires the following additional documentation: motor carrier permit, truck title, registration, and proof of insurance, trailer or tanker registration, bills of lading, sub-hauling agreements, existing commitments of trucking on other jobs, and subcontract specific information (e.g., type of material hauled, number of trucks/trailers/tankers, load capacity, distance traveled, and schedule). Truckers need to own at least one, operable, insured truck.</li> <li>DBE trucking firms receive 100 percent credit for the value of the hauling. DBE trucking firms who sublease to other DBE firms or DBE owner operators receive 100 percent of the value of the hauling.</li> <li>DBE trucking firms who sublease to non-DBE trucking firms or non-DBE owner operators receive credit for the transportation arrangement or broker fees <u>only</u> – typically from 5 -20 percent of the value of the hauling.</li> <li>Cost of material or supplies are counted at 60 percent for regular dealers. Those claiming to be regular dealers of bulk items must additionally demonstrate that they own and operate appropriate distribution equipment.</li> </ul> <p><b>Important Note:</b> There may be times when further clarification of commitment is requested for other types of work.</p>
Step 4	<p>Determination is made regarding whether goal was met. If goal was not met, the good faith effort documentation will be evaluated.</p> <p><b>Important Note:</b> The steps above are not all inclusive. Other steps may be taken in the contract evaluation process.</p>
Step 5	The contracts are returned to OE or DPAC, whichever is applicable.



## EXHIBIT G

**2-1.10 SUBCONTRACTOR LIST**

On the Subcontractor List form, list each subcontractor to perform work in an amount in excess of 1/2 of 1 percent of the total bid or \$10,000, whichever is greater (Pub Cont Code § 4100 et seq.).

For each subcontractor listed, the Subcontractor List form must show:

1. Business name and the location of its place of business.
2. California contractor license number for a non-federal-aid contract.
3. Public works contractor registration number
4. Portion of work it will perform. Show the portion of the work by:
  - 4.1. Bid item numbers for the subcontracted work
  - 4.2. Percentage of the subcontracted work for each bid item listed
  - 4.3. Description of the subcontracted work if the percentage of the bid item listed is less than 100 percent

02-21-14

**2-1.11 RESERVED**

01-23-15

**2-1.12 DISADVANTAGED BUSINESS ENTERPRISES****2-1.12A General**

Section 2-1.12 applies to a federal-aid contract.

Under 49 CFR 26.13(b):

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

Include this assurance in each subcontract you sign with a subcontractor.

**2-1.12B Disadvantaged Business Enterprise Goal****2-1.12B(1) General**

Section 2-1.12B applies if a DBE goal is shown on the *Notice to Bidders*.

The Department shows a goal for DBEs to comply with the DBE program objectives provided in 49 CFR 26.1.

Make work available to DBEs and select work parts consistent with available DBEs, including subcontractors, suppliers, service providers, and truckers.

Meet the DBE goal shown on the *Notice to Bidders* or demonstrate that you made adequate good faith efforts to meet this goal.

You are responsible to verify at bid opening the DBE firm is certified as a DBE by the California Unified Certification Program and possess the work codes applicable to the type of work the firm will perform on the Contract.

Determine that selected DBEs perform a commercially useful function for the type of work the DBE will perform on the Contract as provided in 49 CFR 26.55(c)(1)–(4). Under 49 CFR 26.55(c)(1)–(4), the DBE must be responsible for the execution of a distinct element of work and must carry out its responsibility by actually performing, managing, and supervising the work.